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IN THE SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY  
STATE OF UTAH

\* \* \* \* \*

MERIDIAN DITCH COMPANY, INC.,	)	
a Utah Corporation,	:	
	)	
Plaintiff,	:	
	)	
-vs-	:	
	)	
KOOSHAREM IRRIGATION COMPANY	:	
and DEE C. HANSEN, State	:	
Engineer of the State of Utah,	:	Civil No. 8159
	)	
Defendants.	:	
	)	Consolidated Cases
	:	
MERIDIAN DITCH COMPANY, INC.,	)	
a Utah Corporation,	:	Civil No. 8160
	)	
Plaintiff,	:	
	)	
-vs-	:	
	)	
KOOSHAREM IRRIGATION COMPANY,	:	
a Utah Corporation,	:	
	)	
Defendant.	)	

\* \* \* \* \*

ORDER GRANTING PLAINTIFF'S AND DENYING  
DEFENDANT KOOSHAREM IRRIGATION COMPANY'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT  
AND DECREE AND PERMANENT INJUNCTION

**RECEIVED**  
MAR 6 1981  
ATTORNEY GENERAL  
NATURAL RESOURCE AGENCIES

The Motion for Summary Judgment of the Plaintiff and the Defendant Koosharem Irrigation Company coming on before the Court on December 22, 1980, in the Courtroom of the Sevier County Courthouse at Richfield, Utah, Ken Chamberlain appearing for the Plaintiff; Dallin W. Jensen, Assistant Attorney General appearing for the Defendant Dee C. Hansen; and Joseph Novak appearing for the Defendant Koosharem Irrigation Company; and the Plaintiff and the Defendant Koosharem Irrigation Company having presented arguments to the Court and having submitted documents, exhibits and affidavits together with written Briefs and the Court being fully advised in the premises now determines that there is no

material issue of fact and that the Plaintiff is entitled to Partial Summary Judgment as prayed for in the Motion;

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff is entitled to one-tenth (1/10th) of the waters of Otter Creek measured at the mouth of Daniels Canyon and also sufficient of the waters flowing above the dam of Meridian Ditch Company to the headwaters of the tributaries of Otter Creek which, including the 1/10th of the waters of Otter Creek will aggregate 10 cubic feet of water per second from April 15 to June 15 and 6 cubic feet per second for the remainder of the year and there is no limitation as to the zone or segment of Otter Creek from which said waters are realized and it will include all of the water which aggregates above the Koosharem Irrigation Company dam.

IT IS FURTHER ORDERED that the State Engineer's Memorandum Decision of January 16, 1979 is affirmed in the following particulars:

A. That three-tenths (3/10ths) of the waters of Otter Creek, as measured at the mouth of Daniels Canyon, be delivered into the ditch which empties into Koosharem Reservoir as is presently being done.

B. That a measuring device be installed in the mentioned ditch immediately upstream from where the ditch enters the reservoir. This measuring device would be used to determine any seepage loss occurring in the ditch between the mouth of Daniels Canyon and the reservoir.

C. That the Koosharem Irrigation Company release from the reservoir three-tenths (3/10ths) of the flow from Otter Creek less corresponding seepage losses as measured into the reservoir.

D. A measuring device shall be installed immediately downstream of the Koosharem Reservoir dam on Otter Creek to accurately measure out the three-tenths (3/10ths) flow

less the same seepage losses as measured into the reservoir (i.e.: the three-tenths flow into the reservoir equals the three-tenths flow out of the reservoir).

E. At the Koosharem Irrigation Company diversion from Otter Creek, Koosharem Irrigation Company shall bypass to Meridian Ditch Company the one-tenth (1/10th) portion of the flow as measured out of the reservoir. The Koosharem Irrigation Company may divert the remaining two-tenths (2/10ths) of the flow plus any accretions to the stream above their diversion and below the reservoir dam not to exceed 18.0 c.f.s.

F. Measuring devices and adequate diversion structures shall be installed at the point where the water is diverted from Otter Creek by the Koosharem Irrigation Company to facilitate an accurate division of the water between the two companies.

G. Paragraph 7 is affirmed except as modified above.

H. Paragraph 8 is overruled.

I. The Koosharem Irrigation Company and the Meridian Ditch Company shall not be allowed to store in the Koosharem Reservoir any of those waters computed to be part of the original three-tenths (3/10ths) direct flow from Otter Creek as measured at the mouth of Daniels Canyon.

J. Paragraph 10 is affirmed except the State Engineer is authorized to assess and determine the equities between the parties respecting the cost involved and shall levy those costs to each company according to the benefits received by the respective companies and the Court will reserve jurisdiction in the event the parties cannot agree upon an equitable division of costs as determined by the State Engineer.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff is granted an injunction and the Defendant Koosharem Irrigation Company is hereby perpetually enjoined from interfering with the free flow of water to the Plaintiff's point of diversion.

The Plaintiff's Motion for Partial Summary Judgment is in all other respects granted and the Defendant Koosharem Irrigation Company's Motion for Summary Judgment is denied except as may be expressly provided hereinabove.

IT IS FURTHER ORDERED AND ADJUDGED that this entire Partial Summary Judgment, Order Denying Defendant Koosharem Irrigation Company's Motion for Summary Judgment, and this Permanent Injunction shall be final as provided in Rule 54(b) Utah Rules of Civil Procedure.

DATED this 4th day of <sup>March</sup>~~January~~, 1981.

/s/ Don V. Tibbs

District Judge

PROOF OF SERVICE

SERVED a full, true and correct copy of the foregoing Order, Judgment and Decree, on Joseph Novak, Attorney at Law, Seventh Floor Continental Bank Building, Salt Lake City, Utah (84101) and on Dallin W. Jensen, Attorney at Law, 301 Empire Building, 231 East Fourth South, Salt Lake City, Utah (84111), by U.S. regular mail, postage prepaid, this 5th day of March, 1981.

  
Ken Chamberlain